



David B. Cohen

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	September 11, 2007
Land Use Action Date:	TBD
Board of Aldermen Action Date:	November 19, 2007
90-Day Expiration Date:	December 10, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Jean Fulkerson, Principal Planner

DATE: September 7, 2007

SUBJECT: **Petition #233-07** of THOMAS MURPHY for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXTEND A NON-CONFORMING STRUCTURE to replace two existing rear decks with two slightly larger rear decks at a two-family dwelling at 15-17 WELDON ROAD, Ward 1, NEWTON on land known as Sec 12, Blk 22, Lot 14, containing approximately 11,113 sf of land in a district zoned SINGLE RESIDENCE 2.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioner is seeking a special permit to decrease the existing substandard open space condition from 41.1 percent to 38.9 percent for a lot in Nonantum. A two-family dwelling on the lot was converted from a garage use in 1927. The reduction in open space is caused by the replacement of two existing decks (one per unit), located on the rear façade, with two slightly larger decks.

I. BACKGROUND

The two-family dwelling on the subject property was once an accessory garage structure within the larger "Whittemore" estate. In 1927, the property owner of the garage at this site submitted a petition (#57494) to the Board of Alderman to permit the conversion of the garage to a two-family dwelling. The request for special permit was granted under a zoning provision that was subsequently discontinued in the 1960s. This provision allowed building adaptations subject to certain requirements. The conversion was completed in May 1927. There are no other Board Orders associated with this property.

II. ELEMENTS OF THE PETITION

The petitioner is requesting to remove two existing rear decks, one per dwelling unit, and replace them with slightly larger rear decks in the same location. In so doing, the amount of available open space on the property decreases by 247 square feet. The existing total amount of open space (41.1%) is already substandard (the current requirement is 50%), and which the petitioner's attorney claims is a valid non-conforming condition. A minimum open space requirement of 50% has been in effect since 1987 for all pre-1953 lots in the Single Residence 2 district. Enlarging the decks requires approval of an extension of a valid non-conforming condition. The petitioner and the Planning Department were not able to find building permits in the Inspectional Services Department for either the existing decks or the driveway, and thus further information regarding the installation of these two features is unknown.

III. ZONING RELIEF/APPROVALS

Based on the Chief Zoning Code Official's zoning review (*SEE ATTACHMENT "A"*), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:

- *Section 30-21(a)(2)(b) and Section 30-21(b) to approve a decrease in a valid non-conforming substandard open space from 41.1 percent to 38.9 percent;*
- *Section 30-23 for Site Plan Approval; and*
- *Section 30-24 for Special Permit Approval.*

In his zoning review, the Chief Zoning Code Official (CZCO) noted that the existing tandem parking spaces behind each garage door are undersized for the current parking dimensional requirement. Subsequently, the petitioner's attorney provided additional information to the Commissioner of Inspectional Services, suggesting that the actual requirement for parking at the site is 2 spaces, as the two-family use predates the 1987 requirement that two family dwellings provide four parking spaces (two spaces per unit). Rather than request a waiver for the dimensions of these parking spaces, the petitioner's attorney believes these existing spaces should not be considered for zoning relief. As such, the petitioner did not request a parking waiver under Section 30-19(m), for relief from the dimensional standards. *The CZCO reviewed the additional information and concurs with the conclusion that relief is not required under Section 30-19(m), provided no major alternation of the rear driveway area occurs.*

Of more concern to the Chief Zoning Code Official is the petitioner's continued assertion that the existing open space of 41.1% is a valid non-conforming condition. In his review, based on the submitted documentation, the CZCO was unable to determine that the conditions as related to open space, and the driveway and decks in particular, pre-exist the open space requirement of 50% in an SR2 District for pre-1953 lots. The petitioner's attorney provided the attached memo as documentation on this issue, however the CZCO is not satisfied that this letter alone can support the claim that the open space is legal pre-existing condition. *(SEE ATTACHMENT "B") The petitioner is expected to present further information at the public hearing to support the appropriateness of his claim that the property is presently legally non-conforming as to open space.*

IV. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board should consider the following:

- *Whether the proposed open space ratio of 38.9% is substantially more detrimental to the neighborhood than a valid non-conforming substandard open space of 41.1%.*
- *Whether the substandard open space will have negative impact on the surrounding single-family residential neighborhood.*

V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The 11,113 s.f. lot at 15-17 Weldon Road is located in a Single Residence 2 District, in Ward 1. The site is improved with a two-family dwelling that was converted from a garage in 1927. The garage was formerly part of the Whittemore estate. According to City documents it is not considered an historic resource.

B. Neighborhood

The subject site is located on a short dead-end street, off Summit Street, south of Newtonville Avenue. The immediate neighborhood is predominately single-family homes in an area defined as Nonantum by zip code, but more convenient to Newtonville. The architectural styles of the immediate area are varied, with mid 19th century homes constructed on lots broken off from earlier estate properties.



Figure 1. Existing Conditions at rear of dwelling

VI. ANALYSIS

A. Technical Review

The following table illustrates how the as-built property compares to the dimensional and parking requirements of the Zoning Ordinance.

SR2 OLD LOT	REQUIRED	EXISTING	PROPOSED
Lot Area	10,000 s.f.	11,113 s.f.*	N/C
Lot Frontage	80 ft.	71.11	N/C
Front Setback	25 ft.	16.9 ft.	N/C
Side Setback	7.5 ft.	9.8 ft.	8.2 ft.
Rear Setback	15 ft.	24.1 ft.	15.2 ft.
Building Height	30 ft.	31.32 ft.	N/C
Average Grade	N/A	178.98 ft.	N/C
Lot Coverage	30 %	35.3%	N/C
Open Space	50 %	41.1%	38.9 %

The CZCO believes the lot size to be 11,183.

As shown in the table above, the lot and residence will remain unchanged as to dimensional requirements *except* the existing substandard open space condition.

B. Relevant Site Plan Approval Criteria, Section 30-23

1. Consideration of site design, including the location and the relationship of the site's structures to nearby structures. The structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

Each of the proposed decks are 20 ft. x 14 ft., roughly double the size of the existing decks. The proposed design calls for exterior stairs leading down to the driveway. As some portions of the proposed decks are above existing impervious driveway space, only a portion of each deck counts toward the increase in the open space coverage.

Because the rear façade of the two-family dwelling is 75 ft. in length, and because the proposed decks are replacing existing decks, the installation of two new larger decks should be consistent with and not in derogation of the size, scale and design of the structures in the neighborhood.

2. Screening of the structure from adjoining premises.

A site visit by the Planning Department determined that existing landscape screening is appropriate for the site and no additional landscaping is necessary.

C. Relevant Special Permit Criteria, Section 30-24

1. Convenience and Safety of vehicular and pedestrian movement within the site.

The site design calls for external stairs leading from the two proposed decks into the driveway area. In the case of the stairs closest to the entrance drive, according to the petitioner's plans, a small portion of the stairs is shown in the paved driveway area. The CZCO identified this issue in his report and a site visit by Planning Department staff confirmed that the driveway area is very limited and it is not clear that there will be adequate maneuvering space for a vehicle. In addition, any person stepping off the proposed stairs into the driveway area may not be clearly visible to a driver entering the parking area at the rear of the structure. The Planning Department would strongly recommend that the stairs be redesigned such that there is no impact on the driveway area, or on the lower level entryways to the structure.

The petitioner is expected to present information at the public hearing as to how the stairs will be installed without further reducing the driveway width of the subject property.



Figure 2. Narrow entrance drive and deck location.

2. The specific site is an appropriate location for such use/structure.

The subject site is an appropriate location for the proposed use, as the decks in questions do not appear to be out of scale with the structure, or with other structures in the neighborhood. The dwelling is not identified as an historic resource on the on a City's map titled "*Historic Properties, City of Newton.*" Additionally, Planning Department staff confirmed that the removal of the existing decks is not considered to be "Partial demolition" under the City's Demolition Review Ordinance and, therefore, no further review by the Newton Historical Commission is necessary.

3. The use as developed and operated will not adversely affect the neighborhood

The Planning Department does not anticipate any adverse impact on the neighborhood as a result of the construction of the two proposed decks that would increase the total amount of lot coverage. A small reduction in the amount of open space should not be immediately evident to the casual viewer. Moreover, the decks proposed for the structure do not appear to be out of character with the surrounding neighborhood.

The Planning Department confirmed that the minor increase in impervious cover is below the threshold at which the City's Engineering Division requires drainage plans and information and, therefore, none was submitted.

VII. SUMMARY

The Planning Department has no concerns related to the reduction in the percent of open space on subject property, provided the petitioner is able to properly document that the property is legally non-conforming as to open space. *The petitioner is expected to present further information at the public hearing to support this claim.*

The Planning Department would strongly recommend that the stairs be redesigned such that there is no impact on the driveway area, or on the lower level entryways to the structure.

ATTACHMENTS:

ATTACHMENT A: Zoning Review Memorandum, dated August 6, 2007

ATTACHMENT B: Letter from Attorney G. Michael Peirce to Commissioner John Lojek, dated August 23, 2007.

Zoning Review Memorandum

Dt: August 6, 2007

To: G. Michael Peirce, representing families Murphy and Johnson

Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director, Department of Planning and Development
John Lojek, Commissioner of Inspectional Services

RE: Reduction of open space

Applicant: Murphy, Johnson

Site: 15-17 Weldon Rd., Newton
Zoning: Single Residence 2
Current use: 2-Family Dwelling

SBL: Section 12, Block 22, Lot 14
Lot Area: 11,113 sq. ft. [per plan]
Prop. use: 2-Family Dwelling

Background:

The subject building, formerly known as Whittemore Garage, was at one time part of the Whittemore Estate. In 1927, the prior owners submitted Petition #57494 to the Board of Aldermen, and obtained authorization for the conversion of the garage to a 2-family dwelling, although located in a Single-family zone. The property was granted a special permit pursuant to a zoning provision discontinued in the early 1960's, previously allowing building adaptations subject to certain requirements. Subsequently, the conversion was completed pursuant to Building Permit #897 Ser. No. 538, dated May 31, 1927 as issued by the then Public Buildings Department. The applicants seek to replace the existing rear decks with larger decks, causing further reduction of open space. In addition, an existing tandem space appears to be undersize. The preceding may necessitate approvals by the Board of Aldermen pursuant to Sections 30-21(a)(2)b), 30-21(b), and 30-19(m) and/or relief from the Zoning Board of Appeals pursuant to Section 30-27.

Administrative determinations

1. The subject dwelling is located on property shown on recorded plans as consisting of two lots: a large Lot 11 (per 1927 plan) containing 11,040 sq. ft. and a small Lot 12B (per 1934 plan) containing 143 sq. ft., totaling 11,183 sq. ft. However, the submitted "Topographic Plan of Land", dated May 3, 2006, last revised July 26, 2007, prepared by VTP Associates, Inc. shows a lot with 11,113 sq. ft. The City's GIS system indicates a lot size of 11,183 sq. ft. The applicant is responsible for resolving the differences noted above. Based on information available to date, it appears that the subject combined lot would qualify as a lot existing prior to December 7, 1953 if merged to remove internal lot line. It is noted that due to the location of the small lot on the easterly side of the main lot, the mutual internal lot line is not affected by the proposed deck project, nor are any zoning concerns raised. The following analysis applies pre-53 parameters and is based on the most recently revised plans received July 27, 2007, and information referenced in Plans and Materials Reviewed, below.

2. The subject locus is currently within an SR-2 zone, so renamed effective August 27, 1987 as successor designation for the Residence B zone due to a major Zoning Ordinance update adopted by the City in 1987. The Zoning Atlas maintained by the Engineering Division indicates that at the time of adoption of the original Zoning Ordinance Dec. 27, 1922, the subject property was initially zoned Private Residence, a zone which allowed two-family dwellings. However, at the time the Building Permit was issued in 1927, the property was already rezoned Single Residence. The following summarizes the zoning history of the subject lot.

Zoning history of lot per Eng. Zoning Atlas:

- Dec. 27, 1922 – Priv. Res. By-right 2F max
- May 6, 1925 -- Single Res. By-right SF max
- Dec. 15, 1930 – Single Res. By-right SF max
- Nov. 25, 1940 – Single Res. B By-right SF max
- Aug. 27, 1987 – Single Res. 2 By-right SF max

The Board of Aldermen Order dated May 4, 1927 granted Petition #57494 pursuant to the Zoning Ordinance of that day, Chapter 32, Section 556B, para. C. This provision enabled the adaptation of buildings in Single residence districts meeting certain requirements for use by not more than two families, subject to special permit. Although in effect through the early 1960's, this provision no longer appears in the Zoning Ordinance since the Revised Ordinances of 1965. However, special permits typically run with the land and the subject adaptation special permit should be in effect today if properly recorded (the applicants should confirm this). For the purposes of this analysis, the current 2F use within the SR-2 zone is assumed to have been allowed by prior action of the Board of Aldermen, and is not deemed to be a non-conforming 2F use.

3. Review of the original Order indicates that the Order contains no conditions nor references any approved plans. The Plot Plan on the back of the original Building Permit shows no decks or driveway. While other improvements were undertaken at this dwelling over time, as evidenced by various permits found within the subject property file, there are no permits on file for either decks or driveway. As a result, the existing decks (proposed to be replaced) and existing driveway may have been installed without the benefit of required permits. Based on information available to date, it is not possible to classify either the existing decks or the existing driveway as pre-existing non-conforming conditions.
4. *Section 30-15, Table 1 – Density and Dimensional Controls in Residence Districts and for Residential Uses (Table 1)*, establishes the applicable setbacks in the SR-2 zone for pre-1953 lots. Proposed expanded deck plans include a substantial stair structure from the ground to the second level near the rear corner on the west side. Initial plans showed the stair structure encroaching into the 15 ft. rear setback creating a new setback violation. However, the most recent plans have revised the stair design removing the encroachment.
5. Lot coverage maximum of 30% (see Table 1) has been in effect since 1953 for SR-B. (now SR-2) zones. Submitted plans indicate that existing lot coverage is 35.3%. Since the subject dwelling pre-exists the lot coverage requirement and since the initial footprint with approximately 35% lot coverage exceeded the current 30% maximum, this is considered a valid nonconforming condition. The proposed new larger roofless rear decks would replace existing roofless decks located at the second level. As roofless decks are not included in the calculation of lot coverage as defined in *Section 30-1*, lot coverage will not change and zoning relief is not required for this factor.

6. Minimum open space of 50% (see Table 1) has been in effect since 1987 for all pre-1953 lots in the SR-2 zone. Submitted plans indicate that existing open space is 41.1% at the present time, which is less than the required 50% minimum, when accounting for existing decks and driveway. While the subject dwelling pre-exists the open space requirement, it is not clear when the currently existing second level decks were built. As result, it is not possible at this time to consider the existing decks as establishing grounds for and contributing to a condition of valid non-conforming substandard open space. Moreover, if constructed after 1987, the existing decks would have been subject to the minimum open space requirement.

In addition, it is noted that the existing paved side and rear driveways, more than the decks, cause a significant reduction in open space. Submitted plans indicate existing driveways (approx. 23%) together with lot coverage (approx. 35%) total approximately 58%, resulting in net existing substandard open space of approximately 42% without consideration of any decks. Again, however, it is not clear when the driveways were paved. As result, it is not possible at this time to consider the existing paved areas as establishing grounds for and contributing to a condition of valid non-conforming substandard open space.

The proposed construction of the larger rear decks and related stair structures as indicated on submitted plans, would further reduce open space to 38.9%, derogating the existing substandard open space condition. Based on the information provided to date, the existing substandard open space appears to be non-compliant with respect to the Zoning Ordinance. As a result, Section 30-21(b) pertaining to extension of a nonconforming structure is not applicable. Should the petitioner document to the satisfaction of the City that the driveways in combination with the existing decks have created a valid non-conforming open space condition, zoning relief may be sought from the Board of Aldermen pursuant to Sections 30-21(a)(2)b and 30-21(b). Alternatively, the applicant may wish to consider petitioning the Zoning Board of Appeals for a variance to further reduce open space.

7. Section 30-19(a), *Intent and Purpose*, seeks to ensure "safety" and "well designed" areas for parking and maneuvering of vehicles. Access is provided by means of a driveway along the easterly side of the dwelling leading to the rear yard area. However, it is noted that although recently reduced, the proposed revised deck stair serving the proposed enlarged deck at the rear corner on the east side continues to encroach into the driveway. The petitioners need to address this concern.
8. Section 30-19(d), *Number of Stalls*, subsection (2) requires 4 parking spaces for a two-family dwelling. The required number of spaces are provided on site, with one garaged space plus a tandem space outside per unit located to the rear of the dwelling.
9. Section 30-19(g), *Parking Facilities Containing 5 Stalls or Less*, subsection (2) establishes the minimum size of parking spaces as 9 ft. x 19 ft. Dimensional requirements for parking have been in effect since March 21, 1977. Submitted plans indicate that the tandem space serving the unit with rear garage access near the northwest corner is only 8 ft. wide, necessitating a waiver from the Board of Aldermen per Section 30-19(m). Alternatively, the applicants may wish to consider widening the space to standard size or document to the satisfaction of the City that the space is a valid non-conforming space, i.e. that it existed with current dimensions prior to the adoption the dimensional requirements March 21, 1977, and has not changed.

10. Section 30-19(g)(3), *Parking Facilities Containing 5 Stalls or Less*, subsection (3) establishes that the entrance and exit drive shall be a minimum of 12 ft. wide. The driveway width at the front lot line scales approximately 13 ft. and then narrows to 10 ft. along the side of the building. In addition, submitted plans indicate that part of the paved driveway area overlaps the side lot line and encroaches upon the abutting lot to the east. This wedge shaped encroachment contains no notation on plan as to an easement or other right of passage. The applicants are responsible for ensuring lawful access.
11. As the subject building is more than 50 years old, proposed alterations may need review by the Newton Historical Commission. The applicant is responsible for contacting the Commission to obtain such review as applicable pursuant to historic preservation regulations.
12. See "Zoning Relief Summary" below.

Zoning Relief Summary		
Ordinance		Action Required
	Non-conforming use	N/A
30-21(a)(2)(b) 30-21(b)	N/A	
	Non-conforming building (dwelling)	
30-15, Table 1 30-21(a)(2)(b) 30-21(b)	Approval to decrease existing substandard open space to 38.9% to accommodate larger rear decks, provided applicant documents existing open space as a valid non-conforming condition. [See para. 6, above].	TBD*
	Parking	
30-19(g)(2) 30-19(m)	Approval to waive 9ft. x 19ft. stall size reducing tandem stall adjacent to rear garage entry at northwest corner to 8 ft. x 19ft. [See para. 9, above]	TBD*
	Sign	N/A
	N/A	
	Site	
30-23	Approval of site plan. [Contingent per para. 6 & 9]	TBD*
	Special Permit	
30-24(d)	Approval of special permit. [Contingent per para. 6 & 9]	TBD*
	Zoning Board of Appeals Variances	
30-15, Table 1 30-27	Approval to further decrease non-compliant open space to 38.9% accommodating larger rear decks per plan. [See para. 6, above].	TBD*
30-15, Table 1 30-27	Approval of site plan incorporating such variance(s) as may be granted. [Contingent per para. 6]	TBD*

TBD* = To be determined

Plans and materials reviewed:

- Board of Aldermen proceedings, dated May 2, 1927, pertaining to Petition #57494.
- Board of Aldermen Order approving Petition #57494, May 4, 1927
- Ordinance #61, Chapter XXXII, Section 556B – Paragraph C as heard March 23, 1927
- Building Permit No. 897 Ser. No. 538, May 31, 1927

- Plan titled "Topographic Plan of Land, Newton, Mass. Showing Proposed Conditions at 15-17 Weldon Street" dated May 3, 2006, last revised July 26, 2007, prepared by VTP Associates, Inc., Land Surveyors – Civil Engineers, 132 Adams Street, 2nd Floor, Suite 3, Newton, MA, 02458, stamped and signed by James J. Abely, Professional Land Surveyor.
- Plan titled "Area Plan of Land, Newton, Mass. at 15-17 Weldon Road" dated March 21, 2007, prepared by VTP Associates, Inc., Land Surveyors – Civil Engineers, 132 Adams Street, 2nd Floor, Suite 3, Newton, MA, 02458, stamped and signed by James J. Abely, Professional Land Surveyor.
- Plan titled "15-17 Weldon Street, Newton, MA Elevations", dated 4/10/07, last revised 7/24/07, prepared by Peter Sachs, Architect, 20 Hunter St., Newton, MA 02465, stamped and signed by Peter Sachs, Registered Architect.
- Letter from G. Michael Peirce, dated May 21, 2007 re: 15-17 Weldon Rd. special permit review filing
- Letter from G. Michael Peirce, dated July 27, 2007 transmitting most recent plans
- Exhibit A to Master Deed of 15-17 Weldon Road Condominium
- Subdivision of Land In Newton, Mass, dated February 1927, by Rowland H. Barnes & Henry Beal, Civil Engineers
- Plan of Lot at 59 Summit St., in Newton-Mass, dated August 9, 1934, by Rowland H. Barnes & Henry Beal, Civil Engineers

August 23, 2007

IN HAND DELIVERY

John Lojek, Commissioner
Inspectional Services Department
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

2007 AUG 23 1 PM 4:05
CITY CLERK
NEWTON, MA 02459

Re: 15-17 Weldon Road/special permit/zoning review

Dear Commissioner Lojek:

In this letter I will summarize the substance of our meeting on August 8, 2007, during which I presented my positions regarding certain points raised in that Zoning Review Memorandum dated August 6, 2007, by Juris Alksnitis, Chief Zoning Code Official. In his memo Juris raises certain matters regarding the proper form of zoning relief and whether we also need a special permit for a parking dimensional waiver. As you may remember, this matter concerns a zoning application I have filed seeking a special permit to replace the two (2) second floor (the basement being the 'first' floor) decks located at the rear of the structure with two (2) new, somewhat larger decks. Our position is that as the property is presently legally non-conforming as to open space and as the new decks would slightly increase that nonconformity (41.1% existing and 38.9% proposed) a special permit may be granted under sections 30-21(a)(2)(b) and 30-21 (b).

I will track the issues generally in the order they are raised or presented in the memorandum. In the section entitled "Administrative determinations 1." it is noted that lot sizes (the property technically consists of two lots and, if required to be combined, would under sections 30-15 and 30-26 would be an 'old' lot) on two (2) old plans total 11,183 sq. ft. and the VTP Associates plan shows 11,113 sq. ft. This discrepancy should be and is resolved in favor of the most recent instrument survey.

In "Administrative determinations 2." it is noted that the conversion of the original garage into a two-family house at a time when the property had been rezoned single residence was by virtue of a 1927 Board of Aldermen decision. The question was raised as to the current status of this, what in effect was a special permit, asking if the permit was "properly recorded." It was not until Chapter 808 of the Acts of 1975 (the "Zoning Act" replacing the prior zoning enabling act) that the requirement of recording special permits and variances came in to the general laws. The 1927 decision was simply

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filed in the city records and was exercised-no recording was or is now required for that permit.

In "Administrative determinations 3." the critical issue is raised. Basically the zoning code official is concerned that as there are "no permits on file for either decks or driveway" he can not reach a determination with certainty as to the legal non-conforming status of the lot as it relates to open space. My response, as we discussed, addresses these points relying upon 'evidence' that while to a degree circumstantial I believe you have accepted in the main as dispositive. As to the driveway it should be noted that the requirement for a building permit for a driveway is, in the context of Newton zoning, a relatively new development. At the earliest I would say this came into the ordinance in the 80's, and it may have been well after that.

This converted garage has had two (2) interior 'garage' spaces at the rear of the structure, apparently since its conversion, based upon the obvious age of the garage doors. Further, as indicated upon the enclosed portion of the 1927 plan approving Weldon Road as a way (to create street frontage and thus enable the Board of Aldermen to grant permission for the conversion), one can see an easement area along the side of the "garage" where the driveway is presently located. Since this building was the garage for the large house at the corner of Summit and Bellevue, it is reasonable to conclude that the area alongside the garage shown as that easement was always the access to the rear of the garage, just as it is today.

Additionally, the 1979 aerial photo of the site maintained in the Engineering Department shows that driveway through the trees on the right side of the building and shows a car 'parked' in the rear, facing the house, in front of one of those garages. Thus the fact that there is no driveway building permit is not relevant and does not in and of itself raise a question that the driveway may not have been installed legally-it is in the only practical place it can be to allow access to the garage spaces at the rear. As to the decks, it is my experience that even though no decks are shown on the drawing attached to the 1927 building permit that is not a clear indication that those decks were not there even at that time. In any event, the decks we are to replace (which are accessed by doors out of the respective units, which doorways clearly are original to the rear of the building) total 160 sq. ft., with only 87 sq. ft. over pervious surface, and thus comprising only 1.3% of the impervious surface of the lot-a *di minimis* amount.

In "Administrative determinations 8." reference is made to a parking requirement of 4 for a two-family house. This requirement of two (2) spaces per unit is of fairly recent vintage (1986), and even the original requirement of one space per dwelling unit long post-dated the conversion here. Thus it is our position that at the most this property has a parking demand of 2, which is satisfied by the existing two (2) garage spaces

John Lojek, Commissioner
August 23, 2007
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inside the building. The so-called "tandem space outside per unit" referenced in the Memorandum is in fact not a space at all and as in effect 'excess' parking need not be shown or meet dimensional requirements. Thus the suggestion in "Administrative determinations 9." that the above-referenced "space" meet the standard parking stall dimensional width requirement of 9' is inapplicable. The tandem 'space' is not a really a space as it is not an ordinance requirement. It is basically similar to the situation where someone with an older home and a one car garage also parks a car in their driveway-that place where the car is parked need not meet any dimension control.

In "Administrative determinations 10." the Memorandum discusses driveway entrance/exit requirements. The plan filed shows that the driveway entrance/exit is 13', meeting the ordinance requirement. Again, it is our position that the driveway, having existed for decades and not proposed to be altered, is sufficient for access purposes and should not be an issue when the sole purpose of the special permit filing is to fractionally decrease open space. Any issue raised by a driveway encroachment (which is beyond the 10' clear on the petitioner's property, and not part of the curb cut) is a private matter not within the pervue of the city or Land Use Committee as part of this petition, where here no aspect of the petition relies upon the existence of that area for any purpose.

This letter therefore confirms that the applicant has provided sufficient information to enable you to allow the petition, as filed with the Land Use Committee, to be heard at the September, 2007 public hearing. Please contact me immediately if any conclusion herein presented is not as we had discussed, or in the event you need additional information.

Very truly yours,



G. Michael Peirce

Cc: Juris Alksnitis, Chief Zoning Code Official
Michael Kruse, Director of Planning and Development
Linda Finucane, Clerk, Land Use Committee
Thom Murphy
Michael Johnson